

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOHN D. CERQUEIRA,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

Civil Action No. 05-11652-WGY

**PLAINTIFF'S FIRST MOTION *IN LIMINE* TO PRECLUDE
DEFENDANT FROM CONTRADICTING ITS JUDICIAL ADMISSION
THAT PLAINTIFF BOARDED WHEN HIS ASSIGNED GROUP WAS CALLED**

In paragraph 11 of his Amended Complaint (Doc. No. 3), plaintiff John D. Cerqueira alleged:

American Airlines boarded the passengers for flight 2237 by group number. Mr. Cerqueira was assigned to "Group 1" for boarding purposes. Mr. Cerqueira boarded the aircraft when his assigned group was called. He was among the first coach passengers to board.

In paragraph 11 of its Answer (Doc. No. 5), defendant American Airlines (AA) stated: "AA admits to the allegations in paragraph 11 of the Amended Complaint."

Admissions made in a pleading are judicial admissions, and they are binding. *Schott Motorcycle Supply, Inc. v. Am. Honda Motor Co.*, 976 F.2d 58, 61 (1st Cir. 1992) ("A party's assertion of fact in a pleading is a judicial admission by which it normally is bound throughout the course of the proceeding.") (quotation omitted); *United States v. Belculfine*, 527 F.2d 941, 944 (1st Cir. 1975) ("[J]udicial admissions are conclusive on the party making them."). Despite its judicial admission to the contrary, AA is expected to seek to offer evidence that Mr. Cerqueira boarded out-of-turn. Defendant should be precluded from eliciting testimony or offering any exhibit that

contradicts this judicial admission, or from arguing to the jury that Mr. Cerqueira boarded the flight out-of-turn.

JOHN D. CERQUEIRA

By his attorneys,

/s/ Michael T. Kirkpatrick

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Dated: November 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 17, 2006.

/s/ Michael T. Kirkpatrick

Michael T. Kirkpatrick

CERTIFICATE OF CONFERENCE

I hereby certify that on November 14, 2006, at 1:00 pm, I conferred by telephone with Amy Cashore Mariani, counsel for defendant, and attempted in good faith to resolve or narrow the issue presented in this motion, but the parties were unable to resolve the issue or narrow the areas of disagreement.

/s/ Michael T. Kirkpatrick

Michael T. Kirkpatrick